IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE JURISDICTION

CRIMINAL APPEAL NO.738 OF 1999

The State of Maharashtra ...Appellant.

V/s

Maruti Goroba Jadhav, age about 19 years, residing at Survey No.331/1, Panmala Vasant, Sinhagad Road, Pune - 411 030. ...Respondent.

Mr. A.M. Shringarpure, APP for the appellant.

Mrs. Sharmila Kaushik i/b Mr. M.S. Mohite for the respondent.

CORAM : V.G.PALSHIKAR &
R.C.CHAVAN, JJ
DATED : 22ND JULY 2005

ORAL JUDGMENT : (Per R.C.Chavan, J)

1. This appeal by State takes exception to acquittal of accused in Sessions Case No.220 of 1999 by the learned Additional Sessions Judge, Pune before whom he was tried.

2. Facts which gave rise to prosecution of the respondent are as under:-

. The victim Ashok Janardhan Tupere was known to respondent Maruti Jadhav. Maruti asked the victim as to why victim had canvassed against Maruti in previous election, abused the victim filthily, took out knife

from his pocket and stabbed the victim on stomach, chest and thigh. The cries of the victim attracted Sanjay Waghmare, complainant Shankar Dahibhate and others. The accused, who was running away, was chased but could not be caught. The victim was taken to hospital. On the way to hospital, he disclosed that respondent had stabbed him. On a report by Shankar, an offence was registered.

3. In course of investigation, police caused inquest to be performed on dead body, sent it for post-mortem examination, performed panchnama of spot, seized clothes of the victim, recorded statement of witnesses, arrested the accused, recovered knife at the instance of the accused, sent incriminating articles to Forensic Science Laboratory and, on completion of investigation, chargesheeted the accused.

4. The learned Judicial Magistrate, First Class, Pune committed case to the Court of Sessions. The learned Additional Sessions Judge to whom the case was assigned, framed charge of offence punishable under section 302 I.P.C. against the accused. The accused pleaded not guilty and hence was put on trial.

5. In its attempt to bring home the guilt of the accused, prosecution examined in all 11 witnesses. Upon consideration of the prosecution evidence, in light of defence of denial, the learned Additional Sessions Judge held against the prosecution and proceeded to acquit the accused. Aggrieved thereby, the State has appealed.

6. We have heard the learned Additional Public Prosecutor for the State in support of the appeal. We have also gone through the entire evidence with the help of the learned Additional Public Prosecutor. It may be seen, in this case, that the prosecution case rested on the account of eye witnesses about the incident, an oral dying declaration made by the victim, and recovery of weapons used in commission of offence at the instance of the accused.

7. The complainant - Shankar who was examined as P.W. 1 was supposed to be the eye witness to the incident. He, however, turned hostile and denied the entire contents of the complaint. He stated that he had not seen anybody causing injury to the victim. P.W. 4 - Sanjay Waghmare who was supposed to have been the other eye witness, too turned hostile and refused to state any thing about involvement of respondent.

8. P.W. 3 - Sachin is a nephew of deceased. He stated that, in addition to taking education, he was also looking after his father's Manisha General Store where deceased had come on 26/4/1999 at about 8.30 p.m. to make a telephone call. He stated that after making a call, when the deceased was standing in front of the shop, accused arrived and abused the victim. Accused took out a knife from the pocket of his pants and stabbed the victim. On complainant's cries, one Shankar Dahibhate reached the spot and chased the accused. The witness (P.W. 3 - Sachin) stated that his uncle Ashok was shifted to hospital where he succumbed to his injuries. He claimed that he had shown the spot to the police. He also identified article No.7 before the Court to be the same knife by which the victim was assaulted.

9. In cross-examination, this witness Sachin (P.W.3) stated that he alone was looking after the shop at the time of the incident. Busy Pune-Sinhagad road separates his shop and the house of the victim. He also stated that there was crowd in front of his shop. Though in examination-in-chief, he identified the knife, in cross-examination, he stated that he was not able to identify it. He admitted that the victim's widow, his parents and other relatives were present

when his statement was recorded by the police. He could not deny that there was a discussion amongst the family members as to how to narrate about the incident before the police. Curiously he went on to add that though he remembered all facts he was not going to disclose the facts before the court, indicating that there was some thing which he was hiding. Considering the age of this witness (P.W.3 - Sachin) viz. 14 years at the time of his deposition, the possibility of his having been tutored to give a particular version to police and his hesitation in disclosing some thing which he knows, but does not want to tell the court, casts a serious doubt about his veracity. The learned trial judge was, therefore, right in holding the testimony of Sachin (P.W.3) as not entirely reliable.

10. It may be recalled that the incident had, in fact, taken place just opposite victim's house as P.W. 3 - Sachin stated that Pune-Sinhagad road separates his shop and the house of the victim. P.W.10 - Pushpa, victim's widow states that she was preparing meals when she heard noise and came outside the house. She found her husband in a bent condition with bleeding from his stomach. Thus, this witness (P.W. 10 - Pushpa) had not seen the incident. She states that she went near her husband, inquired as to how he

sustained injuries. Her husband told her that Martya who is the accused, caused injuries to him and had run away. She states that Sanjay Waghmare, Shankar Dahibhate and Vimal Dalvi took her husband to hospital. The learned trial judge has observed that the entire evidence of P.W. 3 - Sachin is silent about arrival of P.W. 10 - Pushpa at spot. Likewise, Pushpa's evidence makes absolutely no reference to Sachin (P.W.3). Thus, it is not clear as to whether Sachin (P.W.3) and Pushpa (P.W.10) at all reached the spot when the incident was either taking place or immediately thereafter.

11. In any case, as already observed, evidence of P.W. 10 - Pushpa is useful only in respect of disclosure made to her by her husband. She states that she conveyed the information which she has received to P.S.I. Ms. Zende. P.S.I Ms. Zende was examined as P.W. 6 at Exhibit-21. She stated that on receiving message from Sasoon Hospital, she went to the hospital and recorded complaint of Shankar Dahibhate as stated by him vide Exhibit-22. It is surprising that P.S.I. Manisha Zende (P.W.6) makes no reference to any disclosure made by P.W. 10 - Pushpa to her. Thus, whatever disclosure was allegedly made by the victim to Pushpa, it has not been immediately conveyed to any police officer. Recording of this

vital information later in due course of investigation, obviously, left the possibility open that the parties had enough time to work on a story which they wanted the authorities to believe. This possibility becomes stark in the light of what P.W. 3 - Sachin has stated. The evidence of Pushpa too is thus not useful to connect the respondent to the crime.

12. The third link which prosecution wanted to establish to connect the respondent with the crime is in respect of discovery of weapon at the instance of the accused. P.W. 2 - Santosh and P.W. 5 - Pramod were supposed to have witnessed discovery and seizure vide Exhibits 14 and 15. They have turned hostile. Same panchnamas seem to have been again marked as Exhibit 48-A and 48-B in course of evidence of Investigating Officer P.W.11 - P.I. Irani. His deposition in respect of this disclosure and resultant seizure of article 7 - knife contained in para 2 is extremely perfunctory. He does not even make the pretence of making interrogation in the presence of witnesses, the accused leading the police party to the spot where the weapon was kept and its discovery at the instance of the accused. Therefore, this evidence about discovery of the knife at the instance of the accused being thoroughly dissatisfactory, was rightly

rejected by the learned trial judge.

13. The analysis of the evidence taken above would show that the prosecution failed to establish any thing to connect the accused to the crime. The learned trial judge, therefore, rightly concluded that the prosecution had failed to prove the guilt of respondent - accused. Consequently, we see no reason to disturb the finding recorded by the trial court. The appeal, therefore, fails and is dismissed. Bail bonds, if any, furnished by the appellant accused shall stand cancelled.

(V.G.PALSHIKAR, J.)

(R.C. CHAVAN, J.)